



February 24, 2012

**ENGROSSED  
HOUSE BILL No. 1365**

DIGEST OF HB 1365 (Updated February 22, 2012 2:58 pm - DI 106)

**Citations Affected:** IC 31-30.

**Synopsis:** Sentencing alternatives for youthful offenders. Establishes sentencing alternatives for courts with criminal jurisdiction for: (1) offenders who are less than 18 years of age who have been waived from a juvenile court to a court with criminal jurisdiction and who are charged as adult offenders; and (2) offenders who are less than 18 years of age who do not come under the jurisdiction of a juvenile court because the offenders are charged with certain criminal offenses. Provides that if such an offender is convicted of committing a felony or pleads guilty to committing a felony, a criminal court may: (1) impose an appropriate criminal sentence on the offender; (2) suspend the criminal sentence imposed; (3) order the offender to be placed into the custody of the department of correction to be placed in a juvenile facility of the division of youth services, if the department agrees to the placement; and (4) provide that the successful completion of the  
(Continued next page)

**Effective:** July 1, 2012.

**McNamara, Steuerwald, Dermody,  
Pierce**

(SENATE SPONSORS — BRAY, YOUNG R MICHAEL)

January 11, 2012, read first time and referred to Committee on Courts and Criminal Code.  
January 23, 2012, reported — Do Pass.  
January 26, 2012, read second time, amended, ordered engrossed.  
January 27, 2012, engrossed.  
January 30, 2012, read third time, passed. Yeas 93, nays 0.

**SENATE ACTION**

February 1, 2012, read first time and referred to Committee on Judiciary.  
February 23, 2012, amended, reported favorably — Do Pass.

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placement of the offender in the juvenile facility is a condition of the suspended criminal sentence. Provides that when an offender becomes 18 years of age, the sentencing court must hold a review hearing concerning the offender before the offender becomes 19 years of age. Allows the sentencing court, after the review hearing, to: (1) discharge the offender if the sentencing court finds that the objectives of the sentence imposed on the offender have been met; (2) order execution of all or part of the offender's suspended criminal sentence in an adult facility of the department of correction; or (3) place the offender in home detention, in a community corrections program, on probation, or in any other appropriate alternative sentencing program.

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February 24, 2012

Second Regular Session 117th General Assembly (2012)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2011 Regular Session of the General Assembly.

## ENGROSSED HOUSE BILL No. 1365

A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 31-30-4 IS ADDED TO THE INDIANA CODE AS  
2 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2012]:

4 **Chapter 4. Sentencing Alternatives for Certain Offenders Under**  
5 **Criminal Court Jurisdiction**

6 **Sec. 1. This chapter applies to the following:**

7 **(1) An offender who:**

8 **(A) is less than eighteen (18) years of age;**

9 **(B) has been waived to a court with criminal jurisdiction**  
10 **under IC 31-30-3; and**

11 **(C) is charged as an adult offender.**

12 **(2) An offender who:**

13 **(A) is less than eighteen (18) years of age; and**

14 **(B) does not come under the jurisdiction of a juvenile court**  
15 **because the offender is charged with an offense listed in**  
16 **IC 31-30-1-4.**

17 **Sec. 2. (a) If:**

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- 1 (1) an offender is:  
 2 (A) less than eighteen (18) years of age;  
 3 (B) waived to a court with criminal jurisdiction under  
 4 IC 31-30-3 because the offender committed an act that  
 5 would be a felony if committed by an adult; and  
 6 (C) convicted of committing the felony or enters a plea of  
 7 guilty to committing the felony; or  
 8 (2) an offender is:  
 9 (A) less than eighteen (18) years of age;  
 10 (B) charged with a felony over which a juvenile court does  
 11 not have jurisdiction under IC 31-30-1-4; and  
 12 (C) convicted of committing the felony by a court with  
 13 criminal jurisdiction or enters a plea of guilty to  
 14 committing the felony with the court;  
 15 the court may, upon its own motion, a motion of the prosecuting  
 16 attorney, or a motion of the offender's legal representative, impose  
 17 a sentence upon the conviction of the offender under this chapter.  
 18 However, the court may not impose a sentence on an offender until  
 19 the probation department of the court has conducted a presentence  
 20 investigation concerning the offender and reported its findings to  
 21 the court or the department of correction has conducted a  
 22 diagnostic evaluation of the offender and reported its findings to  
 23 the court.  
 24 (b) If a court elects to impose a sentence upon conviction of an  
 25 offender under subsection (a) and, before the offender is sentenced,  
 26 the department of correction determines that there is space  
 27 available for the offender in a juvenile facility of the division of  
 28 youth services of the department and the department agrees to  
 29 place the offender in the juvenile facility, the sentencing court may:  
 30 (1) impose an appropriate criminal sentence on the offender  
 31 under IC 35-50-2;  
 32 (2) suspend the criminal sentence imposed, notwithstanding  
 33 IC 35-50-2-2 and IC 35-50-2-2.1;  
 34 (3) order the offender to be placed into the custody of the  
 35 department of correction to be placed in the juvenile facility  
 36 of the division of youth services; and  
 37 (4) provide that the successful completion of the placement of  
 38 the offender in the juvenile facility is a condition of the  
 39 suspended criminal sentence.  
 40 Sec. 3. (a) If there is probable cause to believe that an offender  
 41 described under section 2(b) of this chapter has:  
 42 (1) violated a condition of the offender's suspended criminal

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1 sentence; or  
 2 (2) committed a new offense;  
 3 the court shall conduct a review hearing to determine if the  
 4 offender has committed the violation or the new offense unless the  
 5 offender waives the hearing.

6 (b) If the court finds by a preponderance of the evidence after  
 7 a review hearing conducted under subsection (a) that the offender  
 8 has violated a condition of the offender's suspended criminal  
 9 sentence or committed a new offense or if the offender waives the  
 10 hearing, the court may:

11 (1) continue the offender's placement in the juvenile facility  
 12 under section 2(b) of this chapter;

13 (2) order execution of all or part of the offender's previously  
 14 suspended criminal sentence in an adult facility recommended  
 15 by the department of correction; or

16 (3) make any other modifications to the sentence imposed on  
 17 the offender under section 2(b) of this chapter the court  
 18 considers appropriate.

19 Sec. 4. (a) The department of correction may reclassify an  
 20 offender placed in a juvenile facility under section 2(b) of this  
 21 chapter and transfer the offender to an appropriate adult facility  
 22 if the department determines the offender is no longer amenable to  
 23 treatment within any juvenile facility of the division of youth  
 24 services.

25 (b) If the department of correction reclassifies and transfers an  
 26 offender under this section, the department shall notify the  
 27 sentencing court of the circumstances of the reclassification and  
 28 transfer.

29 Sec. 5. (a) At the request of a sentencing court, the department  
 30 of correction shall provide a progress report to the sentencing  
 31 court concerning an offender sentenced and placed in a juvenile  
 32 facility under section 2(b) of this chapter. When the offender  
 33 becomes eighteen (18) years of age:

34 (1) the department shall notify the sentencing court; and

35 (2) the sentencing court shall hold a review hearing  
 36 concerning the offender before the offender becomes nineteen  
 37 (19) years of age.

38 (b) After a hearing conducted under subsection (a), the  
 39 sentencing court may:

40 (1) discharge the offender if the sentencing court finds that  
 41 the objectives of the sentence imposed on the offender have  
 42 been met;

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- 1           **(2) order execution of all or part of the offender's suspended**
- 2           **criminal sentence in an adult facility of the department of**
- 3           **correction; or**
- 4           **(3) place the offender:**
  - 5           **(A) in home detention under IC 35-38-2.5;**
  - 6           **(B) in a community corrections program under**
  - 7           **IC 35-38-2.6;**
  - 8           **(C) on probation under IC 35-50-7; or**
  - 9           **(D) in any other appropriate alternative sentencing**
  - 10           **program.**

11           **Sec. 6. (a) At any time before an offender placed in a juvenile**  
 12           **facility under section 2(b) of this chapter becomes twenty-one (21)**  
 13           **years of age, the department of correction may transfer the**  
 14           **offender to an adult facility if the department of correction believes**  
 15           **the offender is a safety or security risk to:**

- 16           **(1) the other offenders or the staff at the juvenile facility; or**
- 17           **(2) the public.**

18           **(b) If the department of correction transfers an offender to an**  
 19           **adult facility under this section, the department shall notify the**  
 20           **sentencing court of the circumstances of the transfer.**

21           **Sec. 7. If the suspension of a criminal sentence is revoked under**  
 22           **this chapter, all time served by an offender in a juvenile facility of**  
 23           **the division of youth services of the department of correction shall**  
 24           **be credited toward any criminal sentence imposed on the offender**  
 25           **under this chapter.**

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1365, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

STEUERWALD, Chair

Committee Vote: yeas 9, nays 0.

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 HOUSE MOTION

Mr. Speaker: I move that House Bill 1365 be amended to read as follows:

Page 1, delete lines 5 through 17, begin a new paragraph and insert: **"Sec. 1. This chapter applies to the following:**

**(1) A:**

**(A) juvenile offender; or**

**(B) delinquent offender;**

**who is charged as an adult offender.**

**(2) A directly committed offender who does not come under the jurisdiction of a juvenile court because the offender allegedly violated a statute listed in IC 31-30-1-4.**

**Sec. 2. (a) If:**

**(1) a juvenile offender or delinquent offender is:**

**(A) less than eighteen (18) years of age;**

**(B) waived to a court with criminal jurisdiction under IC 31-30-3 because the offender committed an act that would be a felony if committed by an adult; and**

**(C) convicted of committing the felony or enters a plea of guilty to committing the felony; or**

**(2) a directly committed offender:**

**(A) is less than eighteen (18) years of age;**

**(B) allegedly committed a felony over which a juvenile court does not have jurisdiction under IC 31-30-1-4; and**

**(C) is convicted of committing the felony by a court with criminal jurisdiction or enters a plea of guilty to committing the felony with the court;"**

Page 2, line 5, delete "or" and insert ",".

Page 2, line 5, after "delinquent offender" insert ", or directly committed offender".

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Page 2, line 17, delete "or" and insert ",".

Page 2, line 17, after "delinquent offender" insert ", **or directly committed offender**".

Page 2, line 25, delete "or" and insert ",".

Page 2, line 25, after "delinquent offender" insert ", **or directly committed offender**".

Page 2, line 34, delete "or" and insert ",".

Page 2, line 34, after "delinquent offender" insert ", **or directly committed offender**".

Page 3, line 2, delete "or" and insert ",".

Page 3, line 2, after "delinquent offender" insert ", **or directly committed offender**".

Page 3, line 13, delete "or" and insert ",".

Page 3, line 13, after "delinquent offender" insert ", **or directly committed offender**".

Page 3, delete lines 16 through 20, begin a new paragraph and insert:

**"Sec. 5. (a) The department of correction shall provide a progress report to a court concerning a juvenile offender, delinquent offender, or directly committed offender at the request of the court. When a juvenile offender, delinquent offender, or directly committed offender who has received a suspended criminal sentence under section 2(b) of this chapter becomes eighteen (18) years of age:**

**(1) the department shall notify the court; and**

**(2) the court shall hold an evaluation hearing concerning the offender before the offender becomes nineteen (19) years of age."**

Page 3, line 23, delete "or" and insert ",".

Page 3, line 23, after "delinquent offender" insert ", **or directly committed offender**".

Page 3, line 26, after "offender's" delete "or" and insert ",".

Page 3, line 27, after "offender's" insert ", **or directly committed offender's**".

Page 3, line 29, delete "or" and insert ",".

Page 3, line 29, after "delinquent offender" insert ", **or directly committed offender**".

Page 3, line 36, delete "or" and insert ",".

Page 3, line 37, after "offender" insert ", **or directly committed offender**".

Page 4, line 7, after "offender" insert ",".

Page 4, line 8, delete "or".

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Page 4, line 8, after "offender" insert ", **or directly committed offender**".

Page 4, line 12, delete "or" and insert ",".

Page 4, line 13, after "offender" insert ", **or directly committed offender**".

Page 4, line 19, delete "or" and insert ",".

Page 4, line 20, after "offender" insert ", **or directly committed offender**".

(Reference is to HB 1365 as printed January 23, 2012.)

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#### COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred House Bill No. 1365, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 4, delete "Dual Juvenile Jurisdiction and Criminal Jurisdiction" and insert "**Sentencing Alternatives for Certain Offenders Under Criminal Court Jurisdiction**".

Page 1, delete lines 6 through 12, begin a new line block indented and insert:

**"(1) An offender who:**

**(A) is less than eighteen (18) years of age;**

**(B) has been waived to a court with criminal jurisdiction under IC 31-30-3; and**

**(C) is charged as an adult offender.**

**(2) An offender who:**

**(A) is less than eighteen (18) years of age; and**

**(B) does not come under the jurisdiction of a juvenile court because the offender is charged with an offense listed in IC 31-30-1-4."**

Page 1, line 14, delete "a juvenile" and insert "**an**".

Page 1, line 14, delete "or delinquent offender".

Page 2, line 4, delete "a directly committed offender:" and insert "**an offender is:**".

Page 2, line 5, delete "is".

Page 2, line 6, delete "allegedly committed" and insert "**charged with**".

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Page 2, line 8, delete "is".

Page 2, line 11, delete "exercise dual jurisdiction of both the criminal laws" and insert ", **upon its own motion, a motion of the prosecuting attorney, or a motion of the offender's legal representative, impose a sentence upon the conviction of the offender under this chapter. However, the court may not impose a sentence on an offender until the probation department of the court has conducted a presentence investigation concerning the offender and reported its findings to the court or the department of correction has conducted a diagnostic evaluation of the offender and reported its findings to the court.**

(b) If a court elects to impose a sentence upon conviction of an offender under subsection (a) and, before the offender is sentenced, the department of correction determines that there is space available for the offender in a juvenile facility of the division of youth services of the department and the department agrees to place the offender in the juvenile facility, the sentencing court may:

- (1) impose an appropriate criminal sentence on the offender under IC 35-50-2;
- (2) suspend the criminal sentence imposed, notwithstanding IC 35-50-2-2 and IC 35-50-2-2.1;
- (3) order the offender to be placed into the custody of the department of correction to be placed in the juvenile facility of the division of youth services; and
- (4) provide that the successful completion of the placement of the offender in the juvenile facility is a condition of the suspended criminal sentence."

Page 2, delete lines 12 through 33.

Page 2, line 34, delete "a juvenile".

Page 2, line 35, delete "offender, delinquent offender, or directly committed" and insert "**an**".

Page 2, line 40, after "a" insert "**review**".

Page 3, line 1, after "finds" insert "**by a preponderance of the evidence**".

Page 3, line 1, after "a" insert "**review**".

Page 3, line 2, delete "juvenile offender, delinquent offender, or directly".

Page 3, line 3, delete "committed".

Page 3, delete lines 6 through 10, begin a new line block indented and insert:

- "(1) continue the offender's placement in the juvenile facility under section 2(b) of this chapter;**



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- (2) order execution of all or part of the offender's previously suspended criminal sentence in an adult facility recommended by the department of correction; or**
- (3) make any other modifications to the sentence imposed on the offender under section 2(b) of this chapter the court considers appropriate."**

Page 3, line 11, delete "a" and insert **"an offender placed in a juvenile facility under section 2(b) of this chapter"**.

Page 3, delete line 12.

Page 3, line 13, before "and" delete "offender".

Page 3, line 14, delete ":" and insert **"the department determines the offender is no longer amenable to treatment within any juvenile facility of the division of youth services."**

Page 3, delete lines 15 through 22.

Page 3, line 23, delete "a" and insert **"an"**.

Page 3, delete line 24.

Page 3, line 25, before "court" insert **"sentencing"**.

Page 3, delete lines 27 through 42, begin new paragraph and insert:

**"Sec. 5. (a) At the request of a sentencing court, the department of correction shall provide a progress report to the sentencing court concerning an offender sentenced and placed in a juvenile facility under section 2(b) of this chapter. When the offender becomes eighteen (18) years of age:**

- (1) the department shall notify the sentencing court; and**
- (2) the sentencing court shall hold a review hearing concerning the offender before the offender becomes nineteen (19) years of age.**

**(b) After a hearing conducted under subsection (a), the sentencing court may:**

- (1) discharge the offender if the sentencing court finds that the objectives of the sentence imposed on the offender have been met;**
- (2) order execution of all or part of the offender's suspended criminal sentence in an adult facility of the department of correction; or**
- (3) place the offender:**
  - (A) in home detention under IC 35-38-2.5;**
  - (B) in a community corrections program under IC 35-38-2.6;**
  - (C) on probation under IC 35-50-7; or**
  - (D) in any other appropriate alternative sentencing program.**



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**Sec. 6. (a) At any time before an offender placed in a juvenile facility under section 2(b) of this chapter becomes twenty-one (21) years of age, the department of correction may transfer the offender to an adult facility if the department of correction believes the offender is a safety or security risk to:**

- (1) the other offenders or the staff at the juvenile facility; or**
- (2) the public.**

**(b) If the department of correction transfers an offender to an adult facility under this section, the department shall notify the sentencing court of the circumstances of the transfer.**

**Sec. 7. If the suspension of a criminal sentence is revoked under this chapter, all time served by an offender in a juvenile facility of the division of youth services of the department of correction shall be credited toward any criminal sentence imposed on the offender under this chapter."**

Delete page 4.

and when so amended that said bill do pass.

(Reference is to HB 1365 as reprinted January 27, 2012.)

BRAY, Chairperson

Committee Vote: Yeas 8, Nays 1.

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